THE HONOURABLE SHRI JUSTICE K.C. BHANU

WRIT PETITION NO.13782 OF 2003

DATED THIS LTHE 12TH DAY OF AUGUST, 2005

Between:

N. Umamaheshwara Rao

S/o N. Tirupathaiah, aged 34 years

R/o Quarter No.B1/259, BDL-Township,

Bhanur-502 305.

…Petitioner

The Chief Managing Director,

Bharat Dynamics Limited,

Kanchan Bagh,

Hyderabad. …Respondent

THE HONOURABLE SHRI JUSTICE K.C. BHANU

WRIT PETITION NO.13782 OF 2003

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ORAL ORDER;

This writ petition is filed seeking to issue a writ of Mandamus or any other appropriate writ, order or direction declaring the action of the respondent in not protecting the Basic Pay and DA on par with other officers who migrated to BDL from other organizations as arbitrary, unjust, discriminatory and illegal and is violative of Article 14 of the Constitution of India, direct the respondent to consider and fix the basic pay and D.A as per item No.6.1.3 of the Circular Memo No.BDL/04/51/034/C-P&A dated 25.8.1999 of BDL Corporate office whi.ch in turn is in pursuance of the approval conveyed by the Government of India, direct the respondent to pay all the consequential and incidental benefits of pay and emoluments amounting to Rs.2,79,303.00 along with interest at the rate of 18% per annum from the date of joining with the respondent till the date of realization and pass such other order or orders.

The brief averments of the writ petition are that the petitioner joined the respondent/Bharat Dynamics Limited, Bhanur, Hyderabad, as Deputy Manager (ITG) on 26th May 1999 after his selection vide notification bearing No.M(P&A)-PLG.&Ex.DEVP.BDL/C-P&A/ADVST.98-1 dated 30th October 1998. At the time of his selection and appointment, he was working as Senior Programmer (Grade E-3) with the Singareni Collieries Company Limited, Kothagudem. At the first instance on receipt of the appointment order and before joining the respondent and secondly after joining the respondent, he submitted representations to the respondent for giving pay protection as his basic pay and DA in Singareni Collieries Company Limited, Kothagudem, which were much higher than that offered by the respondent. On such representations, the management of the respondent called for his salary particulars from the Singareni Collieries Company Limited, Kothagudem, to fix his pay and, accordingly, the Director (PA & W) Singareni Collieries Limited,

Kothagudem, furnished the pay particulars of the petitioner to the Management of the respondent. On receipt of the salary particulars, the Management of the respondent replied the petitioner that his basic pay and DA drawn on the date of his joining with the respondent will be protected. However, the Management of the respondent did not do so and failed to extend the benefit of pay protection given to one P. Satish Kumar, Staff No.36455 Assistant Manager (ITG). Hence, this writ petition.

In the counter filed for the respondent it is averred that on selection the petitioner was offered appointment for the post of Deputy Manager, Grade-III in the pay scale of Rs.4800-200-5800-225-8275 (Pre-revised) and on such appointment the petitioner was requested to join the respondent pm on or before 3.3.1999. The petitioner made a request vide his letter 23.02.1999 to extend his joining time till 03.07.1999 and to protect his pay as he was drawing more pay than he was offered. The respondent, accordingly, while extending the joining time till 1st week of July, 1999, informed the petitioner that his Basic + DA drawn on the date of joining the respondent will be protected provisionally and the pay will be re-fixed afresh on revision of pay-scales in the respondent-company. The petitioner was further informed that the case will not be linked to pay revision in Singareni Collieries Company Limited and the last pay drawn by him on the date of joining the respondent will only be protected, for which the petitioner gave acceptance through his letter dated 26.3.1999. It is further averred that the case of P. Satish Kumar and the case of the petitioner cannot be compared with the said P. Satish Kumar. Hence, payment of salary on par with iother officer whio migrated to the respondent-company is denied.

Learned counsel appearing for the petitioner contended that as per Clause 6.1.3 of the Circular Instructions issued by the respondent dated. 25.8.99, the respondent having protected the revised last pay has not given it to the petitioner in spite of requesting to protect his pay at the same rate as he was drawing at the Singareni Collieries Company Limited, Kothagudem, that the benefit of pay protection extended to P. Satish Kumar has not been extended to him and that, therefore, he prays to give a direction.

On the other hand the learned Standing Counsel for the respondent contended that at the time of joining, the pay of the petitioner has been provisionally protected and thereafter his pay has been revised afresh on revision of pay scales in the

organization of the respondent but not in the revision of pay scales of the Singareni Collieries Company Limited, Kothagudem, and, therefore, there are no grounds to issue direction.

The factual matrix is not in dispute is that at the time of joining the respondent, the petitioner was working as Programmer in the Singareni Collieries Company Limited, Kothagudem. By a duly constituted Selection Committee he was appointed as Deputy Manager (ITG) vide proceedings dated 26.5.99, at which point of time the basic pay of the petitioner was Rs.4,800/- per month, whereas the petitioner was drawing the basic pay of Rs.6,490/- in the pay scale of 6000-9425 as per the Salary Certificate issued by the Singareni Collieries Company Limited, Kothagudem, dated 24.5.1999.

It is contended that since the respondent himself admitted in the counter-affidavit that the basic + DA drawn on the date of joining the respondent will be protected provisionally, the respondent ought to have fixed the basic pay at Rs.6,490/-, which pay he was drawing as per the Salary Certificate issued by the Singareni Collieries Company Limited, Kothagudem, dated 24.5.1999. The petitioner addressed a letter to the respondent on 23.2.1999 requesting to protect the same. Accepting the same, the respondents by its proceedings dated.19.3.1999 stated that the basic + DA drawn on the date of joining the respondent will be protected provisionally. Therefore, the respondent is directed to fix the basic pay of the petitioner at Rs.6,490/- with effect from 24.5.1999.

The next contention is that due to revision of pay scales in the Singareni Collieries Company Limited he is entitled for the pay scales as per Circular Instructions 6.1.3 dated 25.8.1999, which reads as follows:-

> "6.1.3 Where pay fixation has been made in the pre-revised scale in BDL taking into account the pay and allowance being drawn in the previous organization, in all such cases, the pay protection would be restored in the new scale provided the scales in the previous organization have also been revised and a revised last pay drawn certificate is produced. In the absence of any such revision, the pay shall be fixed at the minimum of the revised scale.

The further case of the petitioner is that by following the said circular the case of one P. Satish Kumar has been considered and, therefore, there is a discrimination.

No doubt these Circular Instructions, even though having statutory force, for having

extended the benefit to some of the employees and if the same have not been extended to the petitioner then certainly it can be a discrimination. The respondent cannot take two different stands in respect of two employees who stand on the same footing. Therefore, the writ petition is allowed directing the respondent to consider the case, not only in protecting the basic pay + DA at the time of his joining as agreed by the respondent but also giving all other benefits in pursuance of the Circular Instructions particularly 6.1.3 dated 25.8.1999 within a period of two months from the date of receipt of copy of this order.

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Dt.12.08.2005 K.C. BHANU, J

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